

**Senate Study Bill 1174 - Introduced**

SENATE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
AGRICULTURE BILL BY  
CHAIRPERSON SENG)

**A BILL FOR**

1 An Act relating to motor fuel, including ethanol and biodiesel  
2 used in the formulation of motor fuel, by providing for  
3 related infrastructure, tax credits, and appropriations, and  
4 including effective date and applicability provisions.  
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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DIVISION I

REGULATION OF MOTOR FUEL

Section 1. Section 214A.1, Code 2011, is amended by adding the following new subsections:

NEW SUBSECTION. 11A. "*Flexible fuel vehicle*" means a motor vehicle which is powered by an engine capable of operating using E-85 gasoline.

NEW SUBSECTION. 16A. "*Nonblended gasoline*" means gasoline other than ethanol blended gasoline.

Sec. 2. Section 214A.2, subsection 4, paragraph b, Code 2011, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (4) Biodiesel blended fuel classified as from B-6 through B-20 must conform to A.S.T.M. international specification D7467 or a successor A.S.T.M. international specification as established by rules adopted by the department.

Sec. 3. Section 214A.16, subsection 1, Code 2011, is amended by striking the subsection and inserting in lieu thereof the following:

1. A motor fuel pump shall be affixed with a decal identifying the motor fuel that it dispenses, as required in this subsection.

a. If the motor fuel is gasoline, the following shall apply:

(1) For gasoline not blended with ethanol, the decal shall identify it as nonblended gasoline.

(2) For gasoline classified as higher than standard ethanol blended gasoline pursuant to section 214A.2, the decal shall identify it as being for use in flexible fuel vehicles only.

b. If the motor fuel is biodiesel fuel, the decal shall identify the biodiesel fuel as provided in 16 C.F.R. pt. 306.

Sec. 4. Section 422.11N, subsection 1, paragraph a, Code 2011, is amended to read as follows:

a. "*E-85 gasoline*", "*ethanol*", "*ethanol blended gasoline*", "*gasoline*", "*flexible fuel vehicle*", and "*retail dealer*" mean the same as defined in section 214A.1.

1     Sec. 5. Section 422.11N, subsection 1, paragraph b, Code  
2 2011, is amended by striking the paragraph.

3     Sec. 6. Section 452A.2, subsection 18, Code 2011, is amended  
4 to read as follows:

5     18. "*Flexible fuel vehicle*" means ~~a motor vehicle as defined~~  
6 ~~in section 321M.1 which is powered by an engine capable of~~  
7 ~~operating using E-85 gasoline~~ the same as defined in section  
8 214A.1.

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DIVISION II

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LIMITING LIABILITY OF

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RETAIL DEALERS

12     Sec. 7. NEW SECTION. **214A.20 Retail dealers — limitation**  
13 **on liability.**

14     1. A retail dealer is not liable for damages caused to a  
15 motor by the use of incompatible motor fuel dispensed at the  
16 retail dealer's retail motor fuel site, if all of the following  
17 applies:

18     *a.* The incompatible motor fuel complies with the  
19 specifications for a type of motor fuel as provided in section  
20 214A.2.

21     *b.* The incompatible motor fuel is selected by a person other  
22 than the retail dealer, including an employee or agent of the  
23 retail dealer.

24     *c.* The incompatible motor fuel is dispensed from a motor  
25 fuel pump that correctly labels the type of fuel dispensed.

26     2. For purposes of this section, a motor fuel is  
27 incompatible with a motor according to the manufacturer of the  
28 motor.

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DIVISION III

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INFRASTRUCTURE

31     Sec. 8. Section 15G.205, subsection 4, paragraph c, Code  
32 2011, is amended to read as follows:

33     *c.* Notwithstanding section 8.33, unencumbered and  
34 unobligated moneys remaining in the infrastructure fund at the  
35 close of each fiscal year shall not revert but shall remain

1 available in the infrastructure fund for expenditure for the  
2 same purposes ~~until the end of the fiscal year that begins July~~  
3 ~~1, 2011, at which time the unencumbered and unobligated moneys~~  
4 ~~remaining shall revert to the funds from which appropriated~~  
5 provided in this section.

6 Sec. 9. NEW SECTION. 15G.207 Motor fuel blender pump  
7 installation project.

8 1. A motor fuel blender pump installation project is  
9 established in the department under the direction of the  
10 renewable fuel infrastructure board created pursuant to section  
11 15G.202.

12 2. Notwithstanding sections 15G.203, 15G.204, and 15G.205,  
13 or any other provision to the contrary, the department of  
14 economic development shall support the project by using all  
15 available moneys deposited in the renewable fuel infrastructure  
16 fund to award financial incentives to retail dealers as  
17 provided in this section. All moneys in the fund which are not  
18 otherwise obligated or unencumbered on the effective date of  
19 this Act are available for the purposes of this section.

20 3. The project shall be administered by the department and  
21 moneys shall be awarded by the board in the same manner as the  
22 renewable fuel infrastructure program for retail motor fuel  
23 sites as provided in section 15G.203.

24 4. The purpose of the project is to improve retail motor  
25 fuel sites located in this state by installing motor fuel  
26 blender pumps capable of dispensing different classifications  
27 of ethanol blended gasoline or capable of dispensing different  
28 classifications of biodiesel blended fuel. The improvements  
29 may include installing, replacing, or converting related  
30 infrastructure used to store, blend, or dispense ethanol  
31 blended fuel or biodiesel blended fuel from a motor fuel  
32 blender pump. A motor fuel blender pump dispensing ethanol  
33 blended gasoline under the project must dispense different  
34 classifications of ethanol blended gasoline, including E-15  
35 gasoline to be dispensed at all times that the blender pump is

1 operating. Nothing in this section prevents the installation  
2 of a blender pump which is also capable of dispensing E-85  
3 gasoline.

4 5. The renewable fuel infrastructure board shall submit a  
5 report to the general assembly not later than January 1 of each  
6 year of the project, including findings regarding the progress  
7 of the project.

8 6. This section is repealed on July 1, 2014.

9 Sec. 10. EFFECTIVE UPON ENACTMENT. This division of this  
10 Act, being deemed of immediate importance, takes effect upon  
11 enactment.

12 DIVISION IV

13 ETHANOL BLENDED GASOLINE

14 TAX CREDIT

15 Sec. 11. Section 2.48, subsection 3, paragraph d,  
16 subparagraph (5), Code 2011, is amended to read as follows:

17 (5) The ~~ethanol~~ E-15 promotion tax credits available under  
18 section 422.11N.

19 Sec. 12. Section 422.11N, subsection 1, paragraph f, Code  
20 2011, is amended to read as follows:

21 *f.* "*Tax credit*" means the ~~ethanol~~ E-15 promotion tax credit  
22 as provided in this section.

23 Sec. 13. Section 422.11N, subsection 3, Code 2011, is  
24 amended to read as follows:

25 3. The taxes imposed under this division, less the tax  
26 credits allowed under section 422.12, shall be reduced by an  
27 ~~ethanol~~ E-15 gasoline promotion tax credit for each tax year  
28 that the taxpayer is eligible to claim the tax credit under  
29 this section. In order to be eligible, all of the following  
30 must apply:

31 *a.* The taxpayer is a retail dealer who sells and dispenses  
32 ethanol blended gasoline designated as E-15 or higher pursuant  
33 to section 214A.2 through a motor fuel pump in the tax year in  
34 which the tax credit is claimed.

35 *b.* The retail dealer complies with requirements of the

1 department to administer this section.

2 Sec. 14. Section 422.11N, subsection 4, paragraph d, Code  
3 2011, is amended by striking the paragraph.

4 Sec. 15. Section 422.11N, subsection 5, paragraph a,  
5 unnumbered paragraph 1, Code 2011, is amended to read as  
6 follows:

7 For a retail dealer whose tax year is the same as a  
8 determination period beginning on January 1 and ending on  
9 December 31, the retail dealer's tax credit is calculated by  
10 multiplying the retail dealer's total ethanol gallonage from  
11 ethanol blended gasoline designated as E-15 or higher, pursuant  
12 to section 214A.2, by a tax credit rate, which may be adjusted  
13 based on the retail dealer's biofuel threshold percentage  
14 disparity. The tax credit rate is as follows:

15 Sec. 16. Section 422.11N, subsection 5, paragraph a,  
16 subparagraph (1), Code 2011, is amended to read as follows:

17 (1) For any tax year in which the retail dealer has attained  
18 a biofuel threshold percentage for the determination period,  
19 the tax credit rate is ~~six~~ sixteen and one-half cents.

20 Sec. 17. Section 422.11N, subsection 5, paragraph a,  
21 subparagraph (2), subparagraph divisions (a) and (b), Code  
22 2011, are amended to read as follows:

23 (a) If the retail dealer's biofuel threshold percentage  
24 disparity equals two percent or less, the tax credit rate is  
25 ~~four~~ fourteen and one-half cents.

26 (b) If the retail dealer's biofuel threshold percentage  
27 disparity equals more than two percent but not more than four  
28 percent, the tax credit rate is ~~two~~ twelve and one-half cents.

29 Sec. 18. Section 422.11N, subsection 6, Code 2011, is  
30 amended to read as follows:

31 6. A retail dealer is eligible to claim an ~~ethanol~~ E-15  
32 gasoline promotion tax credit as provided in this section even  
33 though the retail dealer claims an E-85 gasoline promotion tax  
34 credit pursuant to section 422.110 for the same tax year and  
35 for the same ethanol gallonage.

1     Sec. 19. Section 422.11O, subsection 5, Code 2011, is  
2 amended to read as follows:

3     5. A retail dealer is eligible to claim an E-85 gasoline  
4 promotion tax credit as provided in this section even though  
5 the retail dealer claims an ~~ethanol~~ E-15 gasoline promotion tax  
6 credit pursuant to section 422.11N for the same tax year for  
7 the same ethanol gallonage.

8     Sec. 20. Section 422.33, subsection 11A, unnumbered  
9 paragraph 1, Code 2011, is amended to read as follows:

10     The taxes imposed under this division shall be reduced by  
11 an ~~ethanol~~ E-15 promotion tax credit for each tax year that  
12 the taxpayer is eligible to claim the tax credit under this  
13 subsection.

14     Sec. 21. Section 422.33, subsection 11A, paragraphs a and b,  
15 Code 2011, are amended to read as follows:

16     a. The taxpayer shall claim the tax credit in the same  
17 manner as provided in section 422.11N. The taxpayer may claim  
18 the tax credit according to the same requirements, for the same  
19 amount, and calculated in the same manner, as provided for the  
20 ~~ethanol~~ E-15 promotion tax credit pursuant to section 422.11N.

21     b. Any ~~ethanol~~ E-15 promotion tax credit which is in excess  
22 of the taxpayer's tax liability shall be refunded or may be  
23 shown on the taxpayer's final, completed return credited to the  
24 tax liability for the following tax year in the same manner as  
25 provided in section 422.11N.

26     Sec. 22. Section 452A.31, subsection 2, paragraph a,  
27 subparagraph (1), Code 2011, is amended to read as follows:

28     (1) The total ethanol blended gasoline gallonage which  
29 is the retail dealer's total number of gallons of ethanol  
30 blended gasoline and which includes any subclassification  
31 required by the department. However, the total ethanol blended  
32 gasoline gallonage must at least include all of the following  
33 subclassifications:

34     (a) The total ~~E-xx~~ E-10 gasoline gallonage which is the  
35 total number of gallons of ethanol blended gasoline ~~other than~~

1 ~~E-85 gasoline~~ designated as E-9 or E-10.

2 (b) The total E-15 gasoline gallonage which is the total  
3 number of gallons of ethanol blended gasoline designated as  
4 E-11 to E-15.

5 (c) The total E-85 flexible fuel gasoline gallonage which  
6 is the total number of gallons of ethanol blended gasoline  
7 designated as E-16 to E-85 gasoline.

8 Sec. 23. Section 452A.31, subsection 4, paragraph a,  
9 subparagraph (1), Code 2011, is amended by striking the  
10 subparagraph and inserting in lieu thereof the following:

11 (1) The aggregate ethanol blended gasoline gallonage which  
12 is the aggregate total number of gallons of ethanol blended  
13 gasoline and which includes the aggregate ethanol blended  
14 gasoline gallonage for each subclassification provided for in  
15 subsection 2.

16 Sec. 24. NEW SECTION. 452A.34 Classification of ethanol  
17 blended fuel.

18 For purposes of this division, ethanol blended fuel shall be  
19 classified in the same manner as provided in section 214A.2.

20 Sec. 25. 2006 Iowa Acts, chapter 1142, section 49,  
21 subsection 2, as amended by 2006 Iowa Acts, chapter 1175,  
22 section 17, is amended to read as follows:

23 2. For a retail dealer who may claim an ~~ethanol~~ E-15  
24 promotion tax credit under section 422.11N or 422.33,  
25 subsection 11A, as enacted in this Act and amended in  
26 subsequent Acts, in calendar year 2020 and whose tax year ends  
27 prior to December 31, 2020, the retail dealer may continue to  
28 claim the tax credit in the retail dealer's following tax year.  
29 In that case, the tax credit shall be calculated in the same  
30 manner as provided in section 422.11N or 422.33, subsection  
31 11A, as enacted in this Act and amended in subsequent Acts,  
32 for the remaining period beginning on the first day of the  
33 retail dealer's new tax year until December 31, 2020. For  
34 that remaining period, the tax credit shall be calculated in  
35 the same manner as a retail dealer whose tax year began on the

1 previous January 1 and who is calculating the tax credit on  
2 December 31, 2020.

3 Sec. 26. EFFECTIVE DATE. This division of this Act takes  
4 effect January 1, 2012.

5 Sec. 27. APPLICABILITY. The sections of this division  
6 of this Act amending section 422.11N and section 422.33,  
7 subsection 11A, and the section of this division of this Act  
8 amending 2006 Iowa Acts, chapter 1142, section 49, subsection  
9 2, as amended by 2006 Iowa Acts, chapter 1175, section 17,  
10 apply to tax years beginning on or after January 1, 2012.

11 DIVISION V

12 TAXES IMPOSED UPON BIODIESEL FUEL

13 Sec. 28. Section 452A.2, Code 2011, is amended by adding the  
14 following new subsection:

15 NEW SUBSECTION. 9A. "*Diesel fuel*" means the same as defined  
16 in section 214A.1.

17 Sec. 29. Section 452A.2, subsection 29, Code 2011, is  
18 amended to read as follows:

19 29. "*Nonterminal storage facility*" means a facility where  
20 motor fuel or special fuel, other than liquefied petroleum  
21 gas, is stored that is not supplied by a pipeline or a marine  
22 vessel. "*Nonterminal storage facility*" includes a facility that  
23 manufactures products such as ~~ethanol as defined in section~~  
24 ~~214A.1~~, biofuel, blend stocks, or additives which may be used  
25 as motor fuel or special fuel, other than liquefied petroleum  
26 gas, for operating motor vehicles or aircraft.

27 Sec. 30. Section 452A.3, subsection 3, Code 2011, is amended  
28 to read as follows:

29 3. a. For the privilege of operating motor vehicles or  
30 aircraft in this state, there is imposed an excise tax on the  
31 use of special fuel in a motor vehicle or aircraft.

32 (1) The tax rate on special fuel for diesel engines of motor  
33 vehicles is twenty-two and one-half cents per gallon. The tax  
34 rate on biodiesel for diesel engines of motor vehicles shall  
35 be determined on a volume basis with the gross metered gallons

1 adjusted to sixty degrees Fahrenheit.

2 (2) The rate of tax on special fuel for aircraft is three  
3 cents per gallon.

4 (3) On all other special fuel, unless otherwise specified in  
5 this section, the per gallon rate is the same as the motor fuel  
6 tax.

7 b. Indelible dye meeting United States environmental  
8 protection agency and internal revenue service regulations  
9 must be added to special fuel before or upon withdrawal at a  
10 terminal or refinery rack for that special fuel to be exempt  
11 from tax and the dyed special fuel may be used only for an  
12 exempt purpose.

13 Sec. 31. Section 452A.17, subsection 1, paragraph a, Code  
14 2011, is amended by adding the following new subparagraph:

15 NEW SUBPARAGRAPH. (11) Diesel fuel used by a nonterminal  
16 storage facility to blend with biodiesel to produce biodiesel  
17 blended fuel, if the biodiesel blended fuel is distributed  
18 to a blender licensed pursuant to section 452A.6 who is also  
19 required to pay the excise tax on the same diesel fuel.

20 Sec. 32. Section 452A.86, Code 2011, is amended to read as  
21 follows:

22 **452A.86 Method of determining gallonage.**

23 1. The exclusive method of determining gallonage of  
24 any purchases or sales of motor fuel, undyed special fuel,  
25 compressed natural gas, or liquefied petroleum gas as defined  
26 in this chapter and distillate fuels shall be on a gross volume  
27 basis. A temperature-adjusted or other method shall not be  
28 used, except as it applies to biodiesel, liquefied petroleum  
29 gas, and or the sale or exchange of petroleum products between  
30 petroleum refiners. All invoices, bills of lading, or other  
31 records of sale or purchase and all returns or records required  
32 to be made, kept, and maintained by a supplier, restrictive  
33 supplier, importer, exporter, blender, or compressed natural  
34 gas or liquefied petroleum gas dealer or user shall be made,  
35 kept, and maintained on the gross volume basis.



1 must have been received by the department on or before the  
2 report's due date. If the retail dealer submits the report on  
3 a quarterly or monthly basis as provided in that section, the  
4 department must have received all such reports by the same due  
5 date.

6 Sec. 36. Section 452A.33, subsection 1, paragraph a,  
7 unnumbered paragraph 1, Code 2011, is amended to read as  
8 follows:

9 Each retail dealer shall submit a motor fuel gallonage  
10 report, detailing its total motor fuel gallonage for a  
11 determination period as follows:

12 EXPLANATION

13 GENERALLY. This bill relates to motor fuel regulated by the  
14 department of agriculture and land stewardship (DALs) pursuant  
15 to Code chapter 214A and classified according to the percentage  
16 of biofuel blended into the motor fuel (e.g., E-10 means a  
17 gallon of gasoline containing 10 percent ethanol and B-5 means  
18 a gallon of diesel fuel containing 5 percent biodiesel). Both  
19 ethanol blended gasoline and biodiesel blended fuel are subject  
20 to promotional programs and tax incentives.

21 GENERAL — REGULATION OF MOTOR FUEL. The bill amends  
22 several provisions in Code chapter 214A, which regulates the  
23 sale of motor fuel by DALs. The bill establishes a standard  
24 for biodiesel blended fuel based on A.S.T.M. international  
25 specifications. It also rewrites a provision that requires  
26 that a motor fuel pump be affixed with a decal (label)  
27 informing the traveling public whether it is dispensing a motor  
28 fuel containing ethanol or biodiesel. It retains the label  
29 requirement for a motor fuel pump dispensing E-85 gasoline  
30 for flexible fuel vehicles or biodiesel blended fuel for  
31 diesel-powered motor vehicles, removes a provision requiring a  
32 label for a motor fuel pump dispensing other types of ethanol  
33 blended fuel (standard ethanol blended gasoline), and requires  
34 a label for a motor fuel pump dispensing gasoline without an  
35 ethanol component (nonblended gasoline).

1       LIMITING LIABILITY OF RETAIL DEALERS. The bill amends  
2 Code chapter 214A, which provides for motor fuel, including  
3 gasoline or ethanol blended gasoline, E-85 gasoline, diesel  
4 fuel, and biodiesel fuel. The bill provides that a retail  
5 dealer is not liable for damages caused to a motor by the use  
6 of an incompatible motor fuel (e.g., the use of E-85 gasoline  
7 in a conventional gasoline-powered motor). The bar against  
8 liability depends upon the satisfaction of certain conditions:  
9 (1) the motor fuel must meet legal specifications, (2) the  
10 retail dealer cannot have selected it for use in the motor, and  
11 (3) the dispensing pump must be correctly labeled.

12       INFRASTRUCTURE. The bill suspends the operation of two  
13 current programs providing incentives for the installation of  
14 renewable fuel infrastructure. The programs are supported from  
15 moneys deposited in the renewable fuel infrastructure fund.  
16 The bill provides that the department of economic development  
17 and the renewable fuel infrastructure board must use all  
18 available moneys deposited in the fund to award financial  
19 incentives to retail dealers participating in a project to  
20 install infrastructure associated with dispensing renewable  
21 fuel from motor fuel blender pumps. The board must report to  
22 the general assembly regarding the project. The project is  
23 eliminated on July 1, 2014.

24       The bill eliminates a provision which provides that moneys  
25 in the fund revert at the end of the fiscal year beginning July  
26 1, 2011.

27       This division of the bill takes effect upon enactment.

28       ETHANOL BLENDED GASOLINE TAX CREDIT AND REPORTING. The bill  
29 amends the ethanol promotion tax credit which is calculated  
30 separately for each retail motor fuel site from which the  
31 retail dealer sells and dispenses ethanol blended gasoline  
32 (Code sections 422.11N and 422.33, subsection 11A). The tax  
33 credit rate depends upon the number of gallons of ethanol  
34 blended gasoline and biodiesel blended fuel that a retail  
35 dealer sold throughout a calendar year (referred to as a

1 determination period). The amount of the tax credit depends  
2 upon whether the retail dealer met that biofuel threshold.  
3 This bill renames the tax credit as the E-15 promotion tax  
4 credit, and provides that the tax credit applies only to those  
5 gallons of ethanol that are part of ethanol blended gasoline  
6 designated as E-15 or higher. It also allows a retail dealer  
7 filing a tax return on a noncalendar year basis to claim the  
8 tax credit. The tax credit is eliminated on January 1, 2021.

9 The bill also amends reporting requirements by retail  
10 dealers and the department of revenue. A retail dealer's  
11 report calculates the total motor fuel gallonage, and further  
12 divides that number based on a number of classifications  
13 depending upon the type of motor fuel sold, including ethanol  
14 blended gasoline gallonage. The department then calculates  
15 the aggregate total for the motor fuel gallonage including by  
16 classification for the determination period. The bill revises  
17 the reporting classifications for ethanol blended gasoline,  
18 by including subclassifications for E-9 and E-10, E-11 to  
19 E-15, and E-16 to E-85. It provides that the department may  
20 establish additional subclassifications.

21 This division of the bill is effective on January 1, 2012,  
22 and tax credit provisions are applicable to the tax years  
23 beginning on or after that date.

24 EXCISE TAXES IMPOSED UPON BIODIESEL FUEL. The bill amends  
25 provisions in Code chapter 452A which relate to an excise tax  
26 imposed upon biodiesel fuel. Generally, an excise tax is  
27 imposed on each gallon of motor fuel, including biodiesel fuel  
28 (Code section 452A.3) based on a gross volume basis without  
29 adjustment (Code section 452A.86). The bill does not directly  
30 change the excise tax imposed on biodiesel fuel, but changes  
31 how the gallonage is calculated at the meter, by requiring that  
32 the excise tax be assessed after adjusting the biodiesel's  
33 temperature to 60 degrees Fahrenheit.

34 The bill also provides for a refund of excise taxes paid  
35 on diesel fuel by nonterminal storage facilities. A person

1 who manufactures a biofuel, including ethanol or biodiesel for  
2 distribution, is classified as a nonterminal storage facility  
3 (Code section 452A.2). A nonterminal storage facility is  
4 required to pay an excise tax on diesel fuel used in producing  
5 biodiesel blended fuel. The bill provides that the nonterminal  
6 storage facility is entitled to a refund of the excise tax paid  
7 on diesel fuel if the biodiesel blended fuel is distributed  
8 to a licensed blender (Code section 452A.6) who must pay the  
9 excise tax on that same diesel fuel.

10 INCOME TAX CREDITS FOR RETAIL DEALERS OF MOTOR FUEL WHICH  
11 CONTAINS ETHANOL OR BIODIESEL. Code chapter 422 establishes a  
12 tax credit for the promotion of ethanol blended gasoline (Code  
13 sections 422.11N and 422.33(11A)), E-85 gasoline (Code sections  
14 422.11O and 422.33(11B)), and biodiesel blended motor fuel  
15 (Code sections 422.11P and 422.33(11C)). The bill provides  
16 that in order for a retail dealer to claim a tax credit, it must  
17 comply with an existing statute that requires a retail dealer  
18 submit a motor fuel gallonage report (Code section 452A.33) for  
19 its latest determination period (calendar year). The report  
20 includes the retail dealer's total gasoline gallonage, ethanol  
21 gallonage, ethanol blended gasoline gallonage, E-85 gasoline  
22 gallonage, diesel gallonage, and biodiesel gallonage for each  
23 motor fuel site or other permanent or temporary location owned  
24 or operated by the retail dealer.